IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

OP.No. 32376 of 1999(D)

PETITIONER:

C.BALAKRISHNAN,
MADHAVAMANGALAM,
T.C., 6/56, VATTIYOORKAVU,
THIRUVANANTHAPURAM 695 013

BY ADV. SRI.B.RAGUNATHAN
SRI.S.BALAN PILLAI
SRI.V.V.MATHEW

RESPONDENTS:

---

1. **STATES OF KERALA, REP.BY THE SECRETARY TO GOVERNMENT, LOCAL ADMINISTRATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.**

2. **DIRECTOR OF MUNICIPAL ADMINISTRATION, THIRUVANANTHAPURAM 695 033.**

3. **THIRUVALLA MUNICIPALITY , REP.BY THE SECRETARY, THIRUVALLA MUNICIPALITY, THIRUVALLA 689 101.**

4. **CORPORATION OF THIRUVANANTHAPURAM, REP.BY THE SECRETARY, CORPORATION OF THIRUVANANTHAPURAM, THIRUVANANTHAPURAM 695 033.**

BY ADV. SRI.N.NANDAKUMARA MENON,SC,TVM CORPN.
SRI.V.GIRI
GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.54888/1999 IN OP. 32376/1999

DISMISSED

7.3.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE MEMO OF CHARGE NO.A4-8046/94 DT.9.8.94 ALONG WITH THE STATEMENT OF ALLEGATIONS OF THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE WRITTEN STATEMENT OF DEFENCE DT.22.9.94 TO THE 2ND RESPONDENT.

EXT.P3:- COPY OF THE SHOW CAUSE NOTICE NO.A4-8046/94 DT.18.8.95 OF THE 2ND RESPONDENT.

EXT.P4:- COPY OF THE OBJECTION DT.28.9.95 TO THE 2ND RESPONDENT.

EXT.P5:- COPY OF THE ORDER NO.A4-8046/94 DT.19.12.95 OF THE 2ND RESPONDENT.

EXT.P6:- COPY OF THE APPEAL PETITION DT.8.2.96 TO THE 1ST RESPONDENT.

EXT.P7:- COPY OF THE ORDER NO.7212/A2/98 DT.3.3.98 OF THE 1ST RESPONDENT.

EXT.P8:- COPY OF THE ORDER NO.P3-511/98 DT.18.9.98 OF THE 2ND RESPONDENT.

/TRUE COPY/

tss

S. SIRI JAGAN, J.

O.P.NO. 32376 OF 1999

DATED THIS THE 7th DAY OF MARCH, 2007

JUDGMENT

The petitioner while working as Revenue Inspector of Thiruvalla Municipality was proceeded against in disciplinary proceedings by issuing Ext.P1 memo of charges dated, 9.8.94. Since the explanation furnished by the petitioner was not satisfactory to the disciplinary authority, an enquiry was conducted, in which the petitioner was found guilty of causing loss to the Municipality. Therefore Ext.P3 show cause notice was issued directing him to show cause why the said loss should not be recovered from him as punishment for the misconduct alleged to have been proved against him. Despite Ext.P4 objection filed by the petitioner by Ext.P5 order the proposed to punishment was confirmed and the punishment of recovery of the loss caused to the Municipality on account of the action of the petitioner was directed to be recovered from him. His Ext.P6 appeal was also rejected by Ext.P7 order. In the meanwhile, he retired from service on 28.2.98. Thereafter, Ext.P8 order was passed directing recovery of part of the said amount from his DCRG and he was also directed to convey his concurrence for recovery of the balance amount from the commuted value of pension

due to him. The petitioner is challenging Exts.P5, P7 and P8 orders in this original petition.

2. He had raised several contentions against the impugned orders. I am not considering all the contentions, since I am impressed by one contention which relates to violation of principles of natural justice on which ground alone the matter has to be remitted to the original authority for fresh decision. The contention is that before passing Ext.P5 order, the petitioner was not furnished with the copy of the enquiry report. According to the petitioner it is settled law that non furnishing of copy of the enquiry report before imposition of punishment would amount the violation of principles of natural justice. Although such a specific ground has been taken in the original petition itself, the counter affidavit silent about that contention. That would show that the contention of the petitioner in this regard is justified. That being so, the entire proceedings subsequent to the submission of the enquiry report by the enquiry officer, are violative of the principles of natural justice. Accordingly, Exts.P5,P7 and P8 orders are quashed and the matter is remanded to the 2nd respondent for fresh consideration of the matter from the stage of issuing fresh show cause notice on the basis of the enquiry report after furnishing a copy of the enquiry report to the petitioner. It is ordered accordingly.

3. The petitioner has got a contention that the proceedings

for recovery from him is violative of Rule 3 of Part III of Kerala Service Rules. I am not inclined to go into this question at this point of time, since the matter is being remanded to the original authority. As and when further steps are taken pursuant to this judgment it would be open to the petitioner to raise all contentions available to him.

Original petition is disposed of as above.

S. SIRI JAGAN, JUDGE

Acd